



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: June 7, 2006 REPORT NO. 06-067

ATTENTION: Honorable Council President and City Council
Docket of June 13, 2006

SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION FOR 80
TENTATIVE MAPS AND MAP WAIVERS FOR CONDOMINIUM
CONVERSIONS (ATTACHMENT 1)
Council Districts 1, 2, 3, 4, 5, 6, 7, 8

OWNERS: Multiple – Reference Attachment 3

APPELLANT: Citizens for Responsible Equitable Environmental Development,
c/o Cory J. Briggs, Briggs Law Corporation

SUMMARY

Issues - Should the City Council AFFIRM staff's environmental determination of exemption prepared for the 80 tentative maps for condominium conversions listed in Attachment 1?

Staff Recommendation - Deny the appeal and uphold the Environmental Determination.

Environmental Review – The City of San Diego as Lead Agency under the California Environmental Quality Act (CEQA) has determined that the projects are exempt pursuant to State CEQA Guidelines Section 15301(k).

Fiscal Impact Statement: Due to the volume of appeals for this general single issue, staff has consolidated the format in this one appeal request. However, also due to this volume, it is inefficient to spread the costs out to each individual deposit account, and staff has been processing this as an overhead item. The processing of each individual project to a decision, however, will be charged to a deposit account established by the applicant. Should the City Council remand the matter back to the Development Services Department or direct a Program Environmental Impact Report be prepared, significant unreimbursed costs would be incurred.

Code Enforcement Impact – None with this action.

Housing Impact Statement – No impact with this action. With the proposed conversion of existing apartments to condominiums, there would be a loss and gain of an equal number of rental units and for-sale units. These projects are subject to all current regulations regarding inclusionary housing and tenant relocation assistance.

BACKGROUND

The proposed projects are Tentative Maps and Map Waivers to convert existing residential units to condominiums. Although each project listed in Attachment 1 has separate ownerships and characteristics, the appeals by Briggs Law Corporation are the same for each and the reasons for the appeals are more global in nature and not specific to each project. In the interest of efficiency and productivity, this one Report is being issued which encompasses each individual project.

Staff conducted the initial reviews of the proposed Tentative Maps and Map Waivers in accordance with the process set forth in Sections 15060 and 15061 of the California Environmental Quality Act (CEQA) Guidelines, and using the City's CEQA Significance Thresholds. Several issues were considered during the reviews, including traffic, parking, and visual quality. Physical impacts related to the loss of affordable housing was also raised as a question to be considered by the department in the evaluation of all of the discretionary condominium conversions.

To date, no substantial evidence has been identified by or presented to staff that would support a fair argument that condominium conversions could result in a significant physical impact on the environment, either singly or cumulatively. Staff therefore determined that the subject projects would not result in a direct or reasonably foreseeable indirect physical change in the environment. City of San Diego staff has determined that the projects are exempt from CEQA pursuant to State CEQA Guidelines Section 15301(k), and these determinations were appealed to the City Council by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation. The individual dates of environmental determinations and appeals are listed in the table in Attachment 1.

While these Process 3 and Process 4 activities have not yet been to public hearings for the purpose of deciding whether to approve or deny the projects, these appeals are before the City Council because of an amendment to CEQA. Effective January 1, 2003, Section 21151 (c) of CEQA has been amended as follows: *If a non-elected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or a mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any.*

Pursuant to this amended legislation, Mr. Cory Briggs filed the appeals (Attachment 2) of the City of San Diego staff's determinations of environmental exemption for the projects. These appeals apply only to the environmental determination.

DELEGATION OF RESPONSIBILITIES

In keeping with Section 15025 of CEQA, Section 128.0103 of the City's Land Development Code assigns the responsibility for implementation of CEQA to the Development Services Department (DSD). The Environmental Analysis Section (EAS) of DSD evaluates all discretionary project proposals, including condominium conversions, to determine whether there is a potential for such actions to result in physical impacts on the environment. Anyone can submit information to EAS to assist in its evaluation; but by law, the evaluation must be impartial and independent of any outside influences.

DISCUSSION

On the appeal forms for each project, the appellant states that "The project does not qualify for exemption under the CEQA Guidelines. Furthermore, the project does not qualify for exemption under the CEQA Guidelines based on exceptions to exemption arising from the cumulative and other potentially significant adverse environmental impacts of converting apartments to condominiums, especially in light of the numerous proposed conversions and the serious decline in affordable housing that the City of San Diego is facing." Staff response is as follows:

The California Secretary of Resources has determined that 33 categories of activities (Sections 15301 through 15333 of the State CEQA Guidelines) are generally exempt from CEQA because these activities do not have the potential to result in physical impacts. However, if there is a reasonable possibility that the activity will have a significant environmental effect due to unusual circumstances, or that there will be a significant cumulative impact from successive projects of the same type in the same place over time, the categorical exemptions may not be used (Section 15300.2).

One of the Class 1 CEQA categorical exemptions is Section 15301(k), **"Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt."** The exemption specified in Section 15301(k) is used by EAS staff for condominium conversions of existing structures or proposed structures that have been permitted but not yet built, as long as there is no expansion of existing use and there are no physical changes involved that would not otherwise be exempt, and when the project would not contribute considerably to a cumulative impact.

The California Public Resources Code requires staff to base its determination that a project will have a significant environmental impact on substantial evidence (Section 21082.2). As defined in Section 15384(b) of the CEQA Guidelines, "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." Section 15384(a) states: "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate **or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment** does not constitute substantial evidence."

CEQA focuses on physical impacts on the environment. Where social and economic impacts are discussed, CEQA requires that those impacts be related to physical impacts on the environment. Staff acknowledges that there is not sufficient affordable housing in San Diego, and that this lack may be considered to have social and economic components. After evaluation of these projects and consideration of the City Attorney's memorandum of November 10, 2005 regarding condominium conversions, staff concluded that no substantial evidence has arisen of a connection between any socio-economic effects resulting from condominium conversions and any physical impact on the environment that would be considered significant. Therefore, for the reasons discussed in the BACKGROUND section above, it is staff's professional opinion that the subject projects qualify for Class 15301(k) categorical exemptions as specified in CEQA.

Please note also that several other large jurisdictions within California, including San Diego County, the City of Santa Barbara, and Los Angeles also apply CEQA exemptions to condominium conversions. Staff is not aware of any city in California that does not use the categorical exemption for condominium conversions. Apart from CEQA, several jurisdictions also have enacted ordinances to regulate condominium conversions.

CONCLUSION

Development Services staff has proposed several revisions to the condominium conversion regulations for consideration by the Council, with direction from the Land Use and Housing Committee. Staff agrees that limited availability of affordable housing in the City of San Diego is an issue of concern. However, staff believes that the concerns with condominium conversions are policy issues within the purview of City Council. Revisions to appropriate policies and regulations are a better and more direct way to address the concerns raised by the Land Use and Housing Committee about condominium conversions.

The subject projects do not include any physical changes in the environment that would not otherwise be exempt, or any intensification of use. Staff is not aware of any substantial evidence that growth inducement or cumulative physical impacts would result. Staff therefore recommends that Council deny the appeals and affirm staff's determination of environmental exemptions for the projects listed in Attachment 1 pursuant to Section 15301(k) of the State CEQA Guidelines.

The City Attorney has opined that a Program Environmental Impact Report (PEIR) should be prepared to address the cumulative impacts of condominium conversions. Staff believes that such a document would likely be challenged in court based on the speculative nature of the unsubstantiated opinions provided regarding cumulative and growth inducing impacts. Staff also notes that a PEIR would probably take approximately eighteen months to complete, and no funding source is currently available.

ALTERNATIVES

1. Deny the appeals and uphold the determinations of environmental exemptions pursuant to State CEQA Guidelines Section 15301(k)
2. Grant the appeals, set aside the environmental determinations, and remand the matter to the Development Services Director for reconsideration, with direction or instruction the City Council deems appropriate.
3. Grant the appeals and direct staff to prepare a Program Environmental Impact Report to assess the physical effects of condominium conversions. If Council chooses this alternative, staff respectfully requests direction from Council regarding the existence of substantial evidence, as required by Section 21082.2 of the California Public Resources Code, supporting a fair argument that condominium conversions result in significant environmental effects. Should this alternative be chosen, staff estimates the fiscal impact to be one full-time equivalent senior planner to complete the PEIR.

Respectfully submitted,

Gary W. Halbert
Development Services Director

Approved: James T. Waring
Deputy Chief of Land Use and
Economic Development

Attachments:

1. [List of specific projects which have been appealed by Briggs Law Corp./Individual Ownerships](#)
2. [Full Copy of Appeals](#)
3. [Determination of Environmental Exemption Forms \(sample\)](#)
4. [Memo from City Attorney's Office, dated 11/10/05](#)
5. [Memo from Robert Manis, Assistant Deputy Director, dated 11/17/05](#)